No. 09-1309

JUL 23 2010
OFFICE

In The

Supreme Court of the United States

STEPHEN W. NIZIO,

Petitioner,

v.

WILLIAM M. COOK, et al.,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of Pennsylvania – Middle District

PETITION FOR REHEARING

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PETITION FOR REHEARING

Petitioner respectfully moves this Court for an order (1) vacating its order of June 28, 2010, which denied the petition for writ of certiorari filed by petitioner on February 17, 2010, and resubmitted per Court request April 26, 2010, and (2) granting the petition for writ of certiorari. The grounds of rehearing are stated below.

REASONS FOR GRANTING REHEARING

I. Intervening Circumstances of a Substantial or Controlling Effect or to Other Substantial Grounds Not Previously Presented.

U.S. law enforcement officers and other officials like judges, prosecutors, and security guards have been given tremendous power by local, state, and federal government agencies – authority they must have to enforce the law and ensure justice in our country. These powers include the authority to detain and arrest suspects, to search and seize property, to bring criminal charges, to make rulings in court, and to use deadly force in certain situations.

Preventing abuse of this authority, however, is equally necessary to the health of our nation's democracy. That is why it's a federal crime for anyone acting under "color of law" willfully to deprive or conspire to deprive a person of a right protected by the Constitution or U.S. law. "Color of law" simply means that the person is using authority given to him or her

by a local, state, or federal government agency. In the instant case some county and/or state action through its officials or agents has been taken, adverse to the rights of a citizen of the United States sought to be protected by the Fourteenth Amendment, which the Amendment was intended to provide against; and that is, state laws, or state action of some kind, adverse to the rights of the citizen secured by the Amendment.[1] There are substantial grounds for Granting Rehearing in this case. The Petitioner has been deprived of his Constitutional or Statutory rights by officials acting "under color of *state law.*" In effect, they were willful participants in official lawlessness. All power may be abused if placed in unworthy hands.

II. Under Color of State Law

Covers not only acts done by an official under a State law, but also acts done by an official under any ordinance of a county or municipality of the State, as well as acts done under any regulation issued by any State or County or Municipal official, and even acts done by an official under color of some State or local custom.

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[1] The Fourteenth Amendment nullifies and makes void all state legislation, and state action of every kind, which impairs the privileges and immunities of citizens of the United States, or which injures them in life, liberty or property without due process of law, or which denies to any of them the equal protection of the laws.

To act "under color of *state law*" means to act beyond the bounds of lawful authority, but in such a manner that the unlawful acts were done while the official was purporting or pretending to act in the performance of his official duties. In other words, the unlawful acts must consist of an abuse or misuse of power which is possessed by the official only because he is an official.

A person may be found guilty even though he was not an official or employee of the State, or of any county, city, or other governmental unit if the essential elements of the offense charged have been established and the person was a willful participant with the state or its agents in the doing of such acts.

"Misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law, is action taken 'under color of state law.'" *United States v. Classic*, 313 U.S. 299, 326 (1941).

> Every person who, under *color* of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in *equity*, or other proper proceeding for redress . . .

42 U.S.C. § 1983 (1988).

Title 18, U.S.C., Section 241 Conspiracy Against Rights

This statute makes it unlawful for two or more persons to conspire to injure, oppress, threaten, or intimidate any person of any state, territory or district in the free exercise or enjoyment of any right or privilege secured to him/her by the Constitution or the laws of the United States (or because of his/her having exercised the same).

It further makes it unlawful for two or more persons to go in disguise on the highway or on the premises of another with the intent to prevent or hinder his/her free exercise or enjoyment of any rights so secured.

Punishment varies from a fine or imprisonment of up to ten years, or both; and if death results, or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title or imprisoned for any term of years, or for life, or may be sentenced to death.

Title 18, U.S.C., Section 242 Deprivation of Rights Under Color of Law

This statute makes it a crime for any person acting under color of law, statute, ordinance, regulation, or custom to willfully deprive or cause to be deprived from any person those rights, privileges, or immunities secured or protected by the Constitution and laws of the U.S.

This law further prohibits a person acting under color of law, statute, ordinance, regulation or custom to willfully subject or cause tc be subjected any person to different punishments, pains, or penalties, than those prescribed for punishment of citizens on account of such person being an alien or by reason of his/her color or race.

Acts under "color of any law" include acts not only done by federal, state, or local officials within the bounds or limits of their lawful authority, but also acts done without and beyond the bounds of their lawful authority; provided that, in order for unlawful acts of any official to be done under "color of any law," the unlawful acts must be done while such official is purporting or pretending to act in the performance of his/her official duties. This definition includes, in addition to law enforcement officials, individuals such as Mayors, Council persons, Judges, Nursing Home Proprietors, Security Guards, etc., persons who are bound by laws, statutes, ordinances, or customs.

Punishment varies from a fine or imprisonment of up to one year, or both, and if bodily injury results or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire shall be fined or imprisoned up to ten years or both, and if death results, or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.

The Fourth Amendment of the U.S. Constitution guarantees the right against unreasonable searches or seizures. A law enforcement official using authority provided under the color of law is allowed to stop individuals and, under certain circumstances, to search them and retain their property. It is in the abuse of that discretionary power – such as an unlawful detention or illegal confiscation of property – that violation of a person's civil rights may occur.

Fabricating evidence against an individual also violates the color of law statute, taking away the person's rights of due process and unreasonable seizure. In the case of deprivation of property (including the instant case), the color of law statute would be violated by unlawfully obtaining or maintaining a person's property, which oversteps or misapplies the official's authority. "The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury."

While it is well settled that the Bill of Rights and the Fourteenth Amendment are not "directed against the action of individuals," it must not be assumed that the citizen enjoys no federal protection against the invasion of his civil rights. It was not until the Civil Rights Section in the Department of Justice, created in 1939, decided to appeal the *Classic* case (1941) that the Supreme Court got its first opportunity to interpret Section 242. There it held the statute applicable to Classic, a state election official, on the ground that "misuse of power, possessed by

virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law, is action taken 'under color of state law.'"

Two counts of an indictment found in a federal district court charged that appellees [Classic and others], Commissioners of Elections, conducting a primary election under Louisiana law, to nominate a candidate of the Democratic Party for representative in Congress, willfully altered and falsely counted and certified the ballots of voters cast in the primary election . . . and also that the willful action of appellees as state officials, in falsely counting the ballots at the primary election and in falsely certifying the count, deprived qualified voters of that right and or the equal protection of the laws guaranteed by the Fourteenth Amendment, all in violation of Section 20 of the Criminal Code, and is presently called Section 242 of Title 18 of the U.S. Code . . . If a right secured by the Constitution may be infringed by the corrupt failure to include the vote at a primary in the official count, it is not significant that the primary, like the voting machine, was unknown when Section 19 was adopted, and is presently called Section 241 of Title 18 of the U.S. Code. Abuse of either may infringe the right and therefore violate Section 19. . . .

The right of the voters at the primary to have their votes counted is, as we have stated, a right or privilege secured by the Constitution, and to this Section 20 also gives protection. The alleged acts of appellees were committed in the course of their performance of duties under the Louisiana statute

requiring them to count the ballots, to record the result of the count, and to certify the result of the election. Misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law, is action taken "under color of" state law. . . . Here the acts of appellees infringed the Constitutional right and deprived the voters of the benefit of it within the meaning of Section 20. . . .

Reversed

In the instant case, Andrew Harden Notary Public and/or Respondent misused his power possessed by virtue of state law. Also, Petitioner was told by an investigator from the Commonwealth of Pennsylvania Department of State Bureau of Enforcement and Investigation that Respondent works at the Court House in question. The Respondent (Harden) falsely taking and/or falsifying acknowledgments on (2) two separate documents in which the fraud manifested by the official is that: [On this, the 12 day of Nov. 2008, before me, a notary public, the undersigned officer, personally appeared Stephen W. Nizio known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained.

In Witness Whereof, I hereunto set my hand and official seal.]

Besides the fraud and misuse of power by Respondent (Harden), another Respondent in this

case Bryan D. Walters, Prothonotary did not have legal or lawful authority to execute the fraudulent deeds Petitioner found at the Chester County Recorder of Deeds office. It is pertinent to know the difference between lawful and legal any time one is discussing matters of law.[2] Some legislative or administrative procedure may be legal but not lawful, while a legislative or administrative procedure that is lawful is, at the same time, legal. The distinction being that a legal procedure is one simply done in accordance with some legislative act but without regard to morals, while the lawful procedure accords with both legal and moral factors. Fraud by officials in the performance of their official duties cannot be made lawful. Also, no one witnessed Respondent (Walters) sign anything either. Could it be that the Respondent (Walters) did not execute anything? Perhaps this is why Respondent (Walters) would not return calls to an investigator with the Pennsylvania Department of State who has tried numerous times to contact the Respondent (Walters).

Currently, the Respondent (Cook) and others are trying to sell these fraudulent deeds. This will

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[2] The function of guarding the public against acts deemed illegal rest with the public officials. The misuse of power possessed by virtue of state law by an official and/or officials is in violation of specific constitutional protections against such abuses of power. Such an injury is appropriate for judicial redress, and the Petitioner has established the necessary nexus between his status and the nature of the unconstitutional action to support his claim of standing to secure judicial review.

manifest a new fraud, and surely create more injury and oppression to the Petitioner. Also, the same Realtor that has been involved with issues involving this property and/or properties since 2002 is the one helping them solicit the fraudulent documents in West Vincent Township, Chester County, Pennsylvania. The Realtor is supposed to protect the public from fraud, dishonesty, and deceit. He should not be part of such actions and deceptive business practices.

It is critical that this Court grant certiorari and make a ruling, or at least require the courts below to do so.[3]

CONCLUSION

For the foregoing reasons, and for the reasons stated in the petition for writ of certiorari, petitioner prays that this Court grant rehearing of the order of denial, vacate that order, grant the petition for writ of certiorari, and review the judgment below.

Respectfully submitted,

Stephen W. Nizio
Petitioner
Date: July 23, 2010

[3] There was no response from the opposing counsel or any of the Respondents to the petition for writ of certiorari. The record shows no waiver by the counsel.

CERTIFICATE OF COUNSEL

I hereby certify that this petition for rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 44.2.

STEPHEN W. NIZIO